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11 **UNITED STATES DISTRICT COURT**  
12 **CENTRAL DISTRICT OF CALIFORNIA**  
13

14 ROBIN BAIN,

15 Plaintiff,

16 vs.  
17

18 FILM INDEPENDENT, INC., *et al.*,

19 Defendants.  
20

21 *And all related counterclaims.*

Case No.: 2:18-cv-04126-PA-JEM  
Honorable Percy Anderson Presiding

**JOINT RULE 26(f) REPORT**

Scheduling Conference: 9/24/2018  
Time: 10:30 AM  
Courtroom: 9A – 1<sup>st</sup> Street

22  
23 By and through their attorneys of record, who are set forth below, the parties  
24 have prepared and hereby submit this jointly signed Scheduling Conference report  
25 following the conference of counsel required by Federal Rule of Civil Procedures  
26 16(b) and 26(f), Central District Local Rule 26-1 and this Court's Order setting a  
27 Scheduling Conference.

1 **A. STATEMENT OF THE CASE**

2 **Plaintiff/Counterclaim Defendant Bain's Contentions**

3 Plaintiff Robin Bain ("Bain" or "Plaintiff") is a Los Angeles-based  
 4 filmmaker. Bain owns the copyright in the film *Girl Lost* (previously titled  
 5 "Nowhereland") (the "Film"), which features Defendant Jessica Cesaro, also  
 6 known as Jessica Haid ("Haid" or "Defendant"). Haid asked Bain to release  
 7 her scenes from the Film for use on an acting reel to promote Haid's career. As  
 8 the Film had not yet been released, Bain declined. Prior to the Film's release  
 9 and without Bain's authorization, Haid obtained a watermarked copy of the  
 10 Film and used all or some of fourteen (14) different scenes, including those  
 11 comprising the heart of the Film and the Film's ending, in an acting reel. The  
 12 watermark was removed from the scenes in the preparation of the reel, and the  
 13 reel was made available for public viewing. Bain sought to resolve this matter  
 14 with Haid and her co-infringers in lieu of litigation, but no resolution could be  
 15 reached.

16 Haid responded to Bain's claims by filing counterclaims of her own  
 17 concerning the production of the Film and her compensation. Those claims fail  
 18 for various reasons that will be addressed elsewhere.

19 Plaintiff estimates that recoverable damages, including without  
 20 limitation Defendant's disgorgeable profits, Plaintiff's actual damages,  
 21 attorneys' costs, and pre-judgment interest on her copyright claim and Digital  
 22 Millennium Copyright Act claim are likely in excess of \$100,000.00.

23 **Defendant/Counter-Claimant Haid's Contentions**

24 Defendant / Counter-Claimant Haid was employed by Plaintiff / Counterclaim  
 25 Defendant Bain to work on the production for the Film which was then titled  
 26 "Nowhereland." Bain engaged Haid to create a sizzle reel and raise funds for the  
 27 Film on the premise that Haid would be cast in the role of "Shara" and that, in

1 addition to monetary compensation that was below minimum wage, Haid would be  
2 allowed to use her performance from the Film in her acting reel. Permission to use  
3 footage of the Film in Haid's acting reel was part of the consideration for her  
4 performance during the production of the Film.

5 Throughout the course of Haid's employment, Haid endured severe hardship  
6 and bullying in hopes that performing the work would be worth obtaining an acting  
7 reel in the end. Instead, Bain violated numerous Labor Code violations, including  
8 breach of contract, fraud, negligent misrepresentation, and failure to provide a safe  
9 work environment. When Haid finally obtained a copy of footage to use in her acting  
10 reel, Bain sued Haid for copyright infringement and violation of the Digital  
11 Millennium Copyright Act.

12 Defendant estimates that recoverable damages, including without limitation  
13 Defendant's actual damages, statutory damages, punitive damages, attorneys' fees,  
14 and pre-judgment interest on her claims for Labor Code violations, breach of  
15 contract, fraud, negligent misrepresentation, and failure to provide a safe work  
16 environment are likely in excess of \$100,000.00.

17 Per the employment agreement executed by Haid and Bain, all claims arising  
18 out of Haid's employment, including all of the claims and counter-claims in this case,  
19 are subject to binding arbitration. Therefore, Haid has initiated her counter-claims  
20 against Bain to preserve her rights in this case, but will subsequently file a Motion to  
21 Compel Arbitration to have this matter stayed pending a decision in arbitration.

## 22 23 **B. SUBJECT MATTER JURISDICTION**

24 This action arises under the Copyright Act of 1976, Title 17 U.S.C. § 101 *et*  
25 *seq.* Accordingly, this Court has federal question jurisdiction under 28 U.S.C. §§  
26 1331 and 1338(a). Concurrently, this Court has supplemental jurisdiction over the  
27 counter-claims brought by Haid, pursuant to 28 U.S.C. § 1367.

1 **C. LEGAL ISSUES**

2 **Plaintiff/Counterclaim Defendant Bain's Contentions**

3 The legal issues in this case involve Bain's ownership of the copyright  
4 in the Film and Haid's infringement thereof, including Haid's access to the film  
5 and the substantial similarity between the Film and the scenes featured in  
6 Haid's acting reel. Secondary liability is at issue as well as direct liability for  
7 infringement. Legal issues concerning heightened damages for willful  
8 infringement and for removal of Bain's copyright management information in  
9 contravention of the Digital Millennium Copyright Act are also present.

10 **Defendant/Counter-Claimant Haid's Contentions**

11 The legal issues in this case involve the promises and contractual  
12 obligations that Plaintiff/Counterclaim Defendant Bain committed to Haid as  
13 consideration for Haid's performance in the Film. Bain repeatedly promised  
14 that Haid's performance would "look great for her acting reel," but  
15 subsequently filed this instant suit against Haid the moment that an acting reel  
16 was obtained.

17 Issues also include Bain's liability during her role as Haid's employer  
18 for committing numerous Labor Code violations, breach of contract, fraud,  
19 negligent misrepresentation, and failing to provide a safe work environment.  
20 Any alleged violation of Copyright or the Digital Millennium Copyright Act  
21 are subject to an applicable defense. Furthermore, the entirety of this dispute is  
22 subject to binding arbitration.

23  
24 **D. MANUAL FOR COMPLEX LITIGATION**

25 The Parties do not contemplate this case to invoke any part of the  
26 complex litigation manual; thus, the parties do not propose any modifications  
27 of the procedures set forth in that manual for this particular action.

1  
2 **E. PARTIES, EVIDENCE, etc.**

3 **Plaintiff/Counterclaim Defendant Bain's Contentions**

4 The parties are Robin Bain, Defendant Jessica Cesaro, also known as Jessica  
5 Haid ("Haid" or "Defendant").

6 Should Defendant reveal in Initial Disclosures or discovery responses any other  
7 individuals or entities involved in the chain of alleged infringement of Bain's Film,  
8 Bain will move to add such individuals or entities as parties to this action.

9 Bain has no corporate parents, subsidiaries, or affiliates that are implicated in  
10 this litigation.

11 **Defendant/Counter-Claimant Haid's Contentions**

12 The parties in this case are Plaintiff/Counterclaim Defendant Bain and  
13 Defendant/ Counterclaimant Haid. Haid is informed that Defendant LA Media  
14 Works, Corp. ("LA Media") was recently served and has yet to appear in this case.  
15 Haid is also informed that Defendant Film Independent, Inc. has been dismissed from  
16 this case.

17 Haid has recently learned the identity of the company that was allegedly acting  
18 as Haid's employer during the relevant times of this case in lieu of Bain, and is  
19 informed and believes that this company is an alias, corporate parent, subsidiary, or  
20 affiliate of Bain. Haid anticipates amending her Counterclaims to include the name  
21 of this newly discovered company as a counterclaim defendant.

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23 **F. INSURANCE**

24 The Parties do not have insurance coverage for the claims at issue.  
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1 **G. MAGISTRATE JUDGE**

2 The Parties do not stipulate to the use of a magistrate judge unless  
3 specifically required under the applicable local rules.  
4

5 **H. ADDING CLAIMS/PARTIES**

6 Plaintiff/Counterclaim Defendant Bain's Contentions

7 Plaintiff does not anticipate that additional parties will be added to the  
8 case; however, should discovery reveal that any other parties participated in the  
9 infringement at issue in this action which are within the jurisdiction of this  
10 Court, Plaintiff will seek to amend the Complaint to add said parties, so long as  
11 they are timely disclosed by Defendant.  
12

13 Defendant/Counter-Claimant Haid's Contentions

14 Haid has recently learned the identity of the company that was allegedly  
15 acting as Haid's employer during the relevant times of his case in lieu of Bain.  
16 Haid anticipates amending her Counter-Claims to include the name of this  
17 newly discovered company as a counterclaim defendant which, to Haid's  
18 knowledge, is an alias, corporate parent, subsidiary, or affiliate of Bain.

19 Except as stated above, Defendant Haid does not anticipate that  
20 additional parties will be added to the case; however, should discovery reveal  
21 that any other parties participated in the infringement at issue in this action  
22 which are within the jurisdiction of this Court, Defendant Haid will seek to  
23 amend the Counter-Claims to add said parties, so long as they are timely  
24 disclosed by Plaintiff.  
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1 influence over Bain's conduct and directly or indirectly contributed to the harm  
2 suffered by Haid.

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4 **K. DISPOSITIVE MOTIONS**

5 Plaintiff/Counterclaim Defendant Bain's Contentions

6 Plaintiff anticipates filing a Motion for Partial Summary Judgment for  
7 liability as to Defendant for copyright infringement by the deadline for  
8 dispositive motions. Plaintiff may also seek adjudication of several of  
9 Defendant's counterclaims at the summary judgment stage. Plaintiff also will  
10 not seek bifurcation.

11  
12 Defendant/Counter-Claimant Haid's Contentions

13 Defendant Haid anticipates filing a Motion to Compel Arbitration on the basis  
14 that the claims in this case are governed by the arbitration provision in Haid's  
15 employment agreement. Otherwise, provided that this case is not stayed pending a  
16 determination in arbitration, should any claims remain pending before this Court after  
17 a Motion to Compel Arbitration is heard, Haid anticipates filing a Motion for  
18 Summary Judgment on the basis that Haid is not liable as to any of Plaintiff Bain's  
19 allegations, and that Bain is liable to Haid for breach of contract, breach of good faith  
20 and fair dealing, fraud, failing to provide a safe work environment, and/or numerous  
21 Labor Code violations.

22  
23 **L. SETTLEMENT**

24 No meaningful settlement discussions have yet taken place.

25 Pursuant to Local Rule 16.5-5, the parties have agreed they would prefer  
26 to institute Central District Settlement Procedure No. 2.



